

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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JUN 13 1974



The Honorable Harold V. Froehlich
House of Representatives

Dear Mr. Froehlich:

This is in response to your recent request for an opinion as to the legality of actions taken by the Federal Energy Office (FEO) to print "\$3 million" worth of gasoline rationing coupons. (The actual amount involved, we have been informed, is estimated to be \$12,108,500.)

You suggest that if the President does not have the authority under present law to ration gasoline, he does not have the authority to print gas rationing coupons. We would agree that the President's authority to ration commodities for civilian end use is far from clear, in view of the fact that the Emergency Energy Act (E. 2589) was vetoed. There is such authority in exceptional cases under the Defense Production Act (DPA) of 1950, as amended, 50 U.S.C. App. 2671(b), providing certain findings are made by the President to the effect that the commodity to be controlled is scarce and critical to the national defense and that the need cannot be met without "dislocation of the normal distribution of such material in the civilian market * * *." In the instant case, no such findings were made, although they might possibly have been justified had the Arab oil embargo not been lifted. The DPA does not require the existence of a formal state of war. However, we do not agree that the absence of authority to ration necessarily means that there is no authority to prepare for rationing, should that authority be conferred at a later date.

According to information received from the FEO, in the Fall of 1973, it was projecting a domestic fuel shortfall of approximately 3 million barrels a day for the first quarter of 1974, primarily as a result of the Arab embargo. Although the President and other Administration spokesmen repeatedly stated that gasoline rationing should only be a last resort, they also said, as did the President in his nationwide radio address of January 19, "Your Government has a responsibility to prepare for the worst, so we shall be ready to ration gas if necessary." At my rate, when Administration witnesses appeared before both House and Senate Appropriations Subcommittees which were considering a supplemental appropriation for "Salaries and expenses" for the Office of Oil and Gas,

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 were repeatedly questioned by anxious Congressmen as to the state of their readiness to "gear up" for gasoline rationing, in view of the severity of the crisis at that time and the long "lead time" necessary for production and for distribution of coupons. See, for example, statement by Senator Alan Bible, Chairman, Subcommittee on Interior and Related Agencies, Senate Committee on Appropriations, at Hearings on the Supplemental Appropriations Act, 1974, November 19, 1973, p. 765. After expressing grave concern about the effect of the Arab embargo on the supply of gasoline, he told the witness, (Mr. Erich R. Zausner, Deputy Assistant Secretary, Management, Department of the Interior):

"You had better gear up to take care of it [the coupon rationing option] under the most pessimistic conditions. That is your responsibility and we have to live up to it."

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 Various Members of the House Subcommittee on the Department of the Interior and Related Agencies, Committee on Appropriations, expressed similar concerns about the Mid-East oil crisis and the actions the Administration was taking--or was failing to take--to alleviate the situation. Representative Clarence D. Long, after observing to witnesses from the Office of Oil and Gas that "It sounds to me like we are in deep trouble," said:

"* * * There seems to me a real difference between rationing and allocation: allocation is to make sure that oil in one part of the country becomes available to another part of the country, so that there aren't surpluses in one area and shortfalls in another, but the rationing is a device for making sure that Congressman Long or anyone else doesn't use as much gasoline and oil as he has used in the past."

* * * * *

"To keep the demand down, to sharply reduce demand. Unless you see that clearly, then you don't see your job, as I see it. You have got to sharply reduce the demand, consumption. Rationing is a way to do it, simply because you can't do it by exhortation. You have to tell a person 'Sir, you are not going to get fuel.'"

He then criticized the Administration for not having "looked far enough down the road" to make sure that the rationing system would be effective soon enough to deal with the problem. Hearings on Supplemental

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Appropriations, 1974, House Subcommittee on the Department of the Interior and Related Agencies, November 7, 1973, pp. 524-525.

There are numerous other passages throughout the hearings and floor debates on the Supplemental Appropriations Act which indicate congressional awareness of and support for the preparations for rationing which the Office of Oil and Gas was proposing to make. We think, therefore, that the legislative history supports the FEO's belief that the disbursement of funds for initial printing of ration coupons from its appropriation under the Supplemental Appropriations Act, 1974, Pub. L. 93-145, enacted January 3, 1974, was, in effect, authorized by the Congress and intended to be used for that purpose. (The first financial commitment, an order of special paper to print the coupons, was not made until January 9, 1974, - six days after enactment of the Supplemental Appropriations Act.)

In any event such doubts as may exist as to the authority to obligate funds in order that the ration coupons could be printed have been cured by the action taken by Congress in enacting the Second Supplemental Appropriation Bill, 1974, which, according to both the House and Senate Committee reports, makes \$13,739,250 of the \$18,000,000 supplemental appropriation for the Office of Oil and Gas of the Department of the Interior available for the printing and storage of gasoline ration coupons.

We hope we have been of assistance in clarifying this matter.

Sincerely yours,

R.E. KELLEY

Deputy Comptroller General
of the United States

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